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U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: NOV 01 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant is the spouse of a U.S. citizen and father of three U.S. citizen children. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and children.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the applicant has established extreme hardship to his spouse and children and that the district director failed to consider the hardship to the applicant's children. In support of the appeal, counsel submits a brief, a letter from the applicant's wife, and the evaluation of a licensed clinical social worker. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

> (i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the elements of—
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, . . .
> > . . .
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—
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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correction institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was actually carried out.

8 U.S.C. § 1182(a)(2)(A). The district director based the finding of inadmissibility under this section on the applicant's conviction for conspiracy to commit bank fraud in violation of 18 U.S.C. § 371, for which he was sentenced to 27 months incarceration, three years probation, and payment of restitution in the amount of $153,986.93. The applicant does not contest the district director's determination of inadmissibility.

Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if—
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that—
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> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
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> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
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> (iii) the alien has been rehabilitated; or
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> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien;
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> . . . and
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> (2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. . .

8 U.S.C. § 1182(h). The applicant seeks a waiver of inadmissibility under INA § 212(h)(1)(B), which is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, a U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the alien himself is not a permissible consideration under the statute. The applicant's qualifying relatives include his wife and three U.S. citizen children, aged 5, 9, and 11.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Counsel alleges that the applicant's spouse and children face extreme hardship if they relocate to Nigeria to avoid separation. Counsel asserts that the applicant's daughters will be forced to undergo female genital mutilation, and that his son will be forced to undergo a manhood ceremony that would result in extreme hardship. Counsel also states that the applicant's daughter [redacted] has a serious health condition, a severe allergy to eggs, which prevents the administration of recommended vaccinations for travel to Nigeria. Further, counsel asserts that Jada would be in serious danger due to the lack of adequate medical care in Nigeria if she is exposed to an allergen and requires hospitalization, as she has in the past. Counsel adds that the loss of comparable educational opportunities in Nigeria, particularly the gifted magnet program in which [redacted] participates, would also constitute extreme hardship to the children. Counsel specifically notes that schools in Nigeria are most often closed due to teacher strikes. Finally, counsel cites the difficulty of cultural adjustment, including learning a new language, Igbo. *See also Declaration of Carmen Renee Obasi* (November 23, 2003) (statements consistent with those of counsel).

The applicant's wife [redacted] who was born in the United States, states in a letter that she will not return to Nigeria, where she briefly lived with her husband. *Letter of Carmen Obasi* (May 15, 2001). She stresses the unhealthy conditions she experienced when briefly living in Nigeria, including lack of electricity, inadequate water and waste drainage, and unsanitary food handling practices. She also recalls observing the re-use of hypodermic needles when she obtained medical care in Nigeria. She expresses concern that the conditions could exacerbate her daughter's eczema. She also fears, based on her experience living in Nigeria, corruption of Nigerian police, exposing her children to their indifference to domestic violence, severe corporal punishment in school and by other adults, insect infestation and the use of pesticides and medications to prevent insect-borne illness, and lack of potable drinking water. It appears that she and her husband have agreed that she and her children will not return to Nigeria due to the conditions there. *See Impact Assessment, Charles Stephen Ohaeri, LCSW, MPA* (October 20, 2003).

Counsel alleges extreme hardship if the applicant's spouse and children remain in the United States to avoid the hardships posed by relocation to Nigeria. Counsel emphasizes the hardship of the separation of the spouse and children from the applicant. Counsel also notes that the applicant's spouse is in school, and the applicant is currently the sole breadwinner for the family and frequent caregiver. *See also Declaration of* [redacted] *Letter of* [redacted] She states that when her children were separated from their father during his incarceration, she worked during the day while they were in school and had to be absent from work as needed for doctor appointments or illness. *Letter of* [redacted]

The record lacks any documentation of country conditions. The record is silent as to whether [redacted] has any family ties in Nigeria, and the extent of her family ties in the United States. The record contains no medical documentation in support of the claims that the applicant's child has a severe allergy to eggs. The record does not contain an indication of which child suffers from eczema or any supporting medical documentation of that condition. The financial documentation in the record consists only of that which was appended to the Form I-864, *Affidavit of Support* (signed May 15, 2001), showing that the couple's income for 2002 comprised $18,000 of "nonemployee compensation" to the applicant from Enuda Shoes, and $6,479 of unemployment compensation. There is no description or documentation of where [redacted] attends school and the program in which she is enrolled. In short, there is no independent evidence to support any of the contentions of counsel and [redacted] other than school records for the children.

In these proceedings, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Although [redacted] and counsel allege serious hardships, the record is virtually devoid of supporting documentation. In view of the lack of objective evidence upon which to base a finding, the AAO cannot accord weight to the applicant's claims regarding country conditions, including (but not limited to) sanitary conditions, inadequacy of medical care and educational opportunities and whether the children would be forced to undergo female genital mutilation and/or other initiation ceremonies against their parents' will or otherwise, medical conditions of the children, the status of his wife as a full time student, and financial or other impact of the refusal of the applicant's admission if his family remains in the United States.

Therefore, the AAO is constrained to find that the record fails to support a finding that [redacted] and her children face extreme hardship if the applicant is refused admission. The AAO notes that Congress did not intend that a waiver be granted in every case where a qualifying relationship exists, and U.S. court decisions

have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative under INA § 212(h)(1)(B), 8 U.S.C. § 1186(h)(1)(B). As the applicant has failed to establish statutory eligibility, no purpose would be served by discussing whether the applicant merits a favorable exercise of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.